

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

RUDY RUIZ,

Defendant and Appellant.

B234847

(Los Angeles County  
Super. Ct. Nos. PA066446 & PA068259)

APPEAL from a judgment of the Superior Court of Los Angeles County,  
Daniel B. Feldstern, Judge. Affirmed.

Rita L. Swenor, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney  
General, Lance E. Winters, Assistant Attorney General, Scott A. Taryle and Linda C.  
Johnson, Deputy Attorneys General, for Plaintiff and Respondent.

---

---

Rudy Ruiz appeals the judgment entered following his conviction by jury of four counts of robbery and two counts of sexual battery. (Pen. Code, §§ 211, 243.4, subd. (a).)<sup>1</sup> He contends one count of sexual battery is not supported by the evidence and requests independent review of an in camera hearing. We reject Ruiz’s evidentiary claim and find no error in the handling of the in camera hearing. We therefore affirm the judgment.

## **FACTS AND PROCEDURAL BACKGROUND**

### *1. The prosecution’s evidence.*

#### *a. Robbery of Torell and Christina S.; sexual battery of Christina S.*

On December 18, 2009, at approximately 3:00 a.m., Richard Torell and Christina S. were walking in Panorama City. Approximately 300 feet ahead of them, they noticed two men, one of whom was Ruiz. Torell and Christina S. crossed the street to avoid the men. As they crossed a second street, Torell saw the men in front of them wearing bandanas over their faces below the eyes.

When Ruiz’s companion took Torell’s wallet, Torell grabbed the wallet, said the robber did not need Torell’s identification, gave the man the money from the wallet and told the robber to “get the fuck out of here.” Ruiz then produced a handgun, pointed it at Torell’s head and told Torell to leave. As Torell walked away, he saw Ruiz and his companion fondle Christina S.’s breasts, groin and buttocks. Torell realized he still had his cell phone and called 911.

Christina S. testified the shorter man pointed a gun at Torell and told him to leave. The taller man looked in her pockets and pulled her front pants pockets out. He then put his hand inside her underwear and touched her vagina for five or ten seconds. He reached inside her bra and massaged her breasts. When one of her breasts fell out of her low-cut top, he played with her nipple. The shorter man massaged her exposed breast and touched Christina S.’s vaginal area outside her clothing. He then said, “Fuck this,” took Christina S.’s black and white Dodgers jacket and left.

---

<sup>1</sup> Subsequent unspecified statutory references are to the Penal Code.

Later that morning, Torell was taken to a location where he “instantly” identified Ruiz, who was wearing Christina S.’s Dodgers jacket. At trial, Torell testified he had no doubt Ruiz was one of the individuals who robbed him.

*b. Robbery of Gonzalez and Jennifer T.; sexual battery of Jennifer T.*

On December 18, 2009, at approximately 3:10 a.m., Elmer Gonzalez and Jennifer T. were walking in an alley in Panorama City when they saw Ruiz and another male. Both were wearing bandanas that covered their faces below the nose. Ruiz produced a handgun and told them to raise their hands. Ruiz’s companion took Gonzalez’s wallet but did not find his cell phone.

Jennifer T. testified Ruiz patted her down with one hand and held the gun in the other. Ruiz removed a cell phone, debit card and money from the pockets of her jacket. He then reached inside her bra and “was touching my private part to see if I had anything else; and once he didn’t see anything else, he just stopped.” Ruiz touched both her breasts, including her nipples, and touched her vaginal area, palm up, over her clothing. “He was kind of feeling if there was something in there, if I was hiding something there . . . .”

When defense counsel asked if Jennifer T. felt she was being patted down when Ruiz reached into her bra, Jennifer T. responded: “Yes, I felt I was being molested.” Jennifer T. was touched in her stomach area as well as in her vaginal area for a brief period of time.

After the men left, Gonzalez called 911. The police arrived and took Gonzalez to a field show up where he identified Ruiz as one of the robbers.

*c. Apprehension.*

Los Angeles Police Officer Doo Hwang and his partner, Officer Scott Goodwin, received a radio broadcast regarding the first robbery. At approximately 3:20 a.m., Hwang saw Ruiz in the area of the incident wearing all black clothing, a black Dodgers jacket, a hood over his head and a bandana around his neck. Hwang detained Ruiz and found a toy handgun approximately 10 feet from him. A cell phone was found under a nearby car. After the field show up, the Dodgers jacket worn by Ruiz was returned to

Christina S. and the cell phone was released to Jennifer T.

2. *Defense evidence.*

Ruiz's wife testified that at approximately 2:50 a.m. on December 18, 2009, she and a friend named Debbie drove Ruiz in Debbie's car to Panorama City to purchase some DVD's, then went to get food. When they returned, Ruiz was being handcuffed.

### **CONTENTIONS**

Ruiz contends the evidence does not support the conviction of sexual battery of Jennifer T. because there was insufficient evidence he touched her for the purpose of sexual arousal, sexual gratification or sexual abuse. He also requests independent review of an in camera hearing the trial court conducted on a motion seeking discovery of police personnel records.

### **DISCUSSION**

1. *The evidence supports the conviction of sexual battery of Jennifer T.*

a. *Elements of sexual battery; factors to be considered in determining intent; standard of review.*

Sexual battery is proscribed by section 243.4, subdivision (a) which states: "Any person who touches an intimate part of another person while that person is unlawfully restrained by the accused or an accomplice, and if the touching is against the will of the person touched and is *for the purpose of sexual arousal, sexual gratification, or sexual abuse*, is guilty of sexual battery." (Italics added.) As used in subdivision (a) of section 243.4, "touches" means "physical contact with the skin of another person . . . ." (§ 243.4, subd. (f)), and "[i]ntimate part" means "the sexual organ, anus, groin, or buttocks of any person, and the breast of a female" (§ 243.4, subd. (g)(1)). Thus, a violation of section 243.4, subdivision (a) requires evidence the defendant touched the skin of an intimate part of the victim with the requisite intent. (*People v. Elam* (2001) 91 Cal.App.4th 298, 310; *In re Gustavo M.* (1989) 214 Cal.App.3d 1485, 1498.)

"The jury may infer a defendant's specific intent to commit a crime from all of the facts and circumstances shown by the evidence." (*People v. Lindberg* (2008) 45 Cal.4th 1, 27.) In discussing the specific intent required for a violation of section 288, which is

substantially similar to the intent required for a violation of section 243.4, subdivision (a), our Supreme Court has stated the “ ‘trier of fact looks to all the circumstances, including the charged act, to determine whether it was performed with the required specific intent.’ [Citations.] Other relevant factors can include defendant’s extrajudicial statements [citation], other acts of lewd conduct admitted or charged in the case [citations], the relationship of the parties [citation], and any coercion, bribery, or deceit used to obtain the victim’s cooperation or to avoid detection [citation].” (*People v. Martinez* (1995) 11 Cal.4th 434, 445.)

When considering a challenge to the sufficiency of the evidence to support a conviction, we determine “whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” (*Jackson v. Virginia* (1979) 443 U.S. 307, 319 [61 L.Ed.2d 560].)

With these principles in mind we address Ruiz’s claim of insufficient evidence to support the jury’s finding he acted for the purpose of sexual arousal, sexual gratification or sexual abuse when he touched Jennifer T.

b. *Application.*

Ruiz’s contention relies primarily on Jennifer T.’s testimony that Ruiz “was touching [her] private part to see if [she] had something else; and once he didn’t see anything else, he just stopped.” Ruiz claims this evidence showed the touching was motivated by a search for additional property, not sexual gratification.

However, Ruiz already had taken Jennifer T.’s cell phone, debit card, and money. It was unlikely she had additional property in her bra. Thus, there was no need for Ruiz to touch the skin of both her breasts, including her nipples, and her vaginal area over her clothing. Based on this evidence, a rational trier of fact could conclude Ruiz touched the skin of an intimate part of Jennifer T., her breasts, for the purpose of sexual arousal, sexual gratification or sexual abuse. Also, although Jennifer T.’s perception of the situation is not controlling, she testified on cross-examination she felt she “was being molested.”

Moreover, in addition to the facts surrounding the attack of Jennifer T., the jury properly may consider “other acts of lewd conduct admitted or charged in the case . . . .” (*People v. Martinez, supra*, 11 Cal.4th at p. 445; see also *People v. Villatoro* (2012) 54 Cal.4th 1152, 1164 [Evidence Code section 1108 permits evidence of charged sex offenses to be offered to prove propensity to commit other charged sex offenses].)

Here, Ruiz robbed and sexually battered Christina S. shortly before he robbed and sexually battered Jennifer T. In the first incident, Ruiz and his companion touched the skin of intimate parts of Christina S. Ruiz massaged Christina S.’s exposed breast and touched Christina S.’s vaginal area outside her clothing. Ruiz does not contest the sufficiency of the evidence to support the conviction of sexual battery of Christina S. It is thus undisputed that Ruiz touched Christina S. for the purpose of sexual arousal, sexual gratification, or sexual abuse. A jury rationally could conclude Ruiz harbored the same intent when he engaged in the same conduct with Jennifer T. shortly thereafter.

Thus, when all the evidence is considered, the jury’s conclusion Ruiz acted with the requisite intent finds overwhelming support in the record.

2. *Independent review of the in camera examination of police personnel records.*

Ruiz filed a pretrial motion seeking discovery of citizen complaints alleging fabrication of evidence or excessive use of force by Officers Hwang and Goodman. (See *Pitchess v. Superior Court* (1974) 11 Cal.3d 531.) The trial court granted the motion as to Officer Hwang with respect to fabrication of evidence and conducted an in camera review of Hwang’s police personnel records but found no discoverable information.

Pursuant to *People v. Mooc* (2001) 26 Cal.4th 1216, 1228-1232, Ruiz requests an independent review of the sealed reporter’s transcript of the *in camera* hearing to determine whether any personnel records incorrectly were withheld. We have performed the requested review and find no error.

**DISPOSITION**

The judgment is affirmed.

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

KLEIN, P. J.

We concur:

CROSKEY, J.

ALDRICH, J.